

them, by and with the advice and consent of council: and in all such executive powers as may arise under laws subsequent to the constitution, the governor may, under the same general clause, be specially directed to require and obtain the concurrence of council in such specified cases.

That the foregoing is the true meaning and construction of this general clause is evident, not only from the general principles, structure, and express letter of the constitution as just commented on, but also from the following considerations. Sect. 29. "But the governor shall not adjourn the assembly otherwise than as aforesaid, nor prorogue or dissolve it at any time." This power the governor only possessed under the laws of 1774, and being no otherwise abrogated by the convention than by this clause, he would of course, but for the exception, have still retained it under the general grant of all other executive powers. Again, sect. 33. "But the governor shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute or custom of England or Great-Britain." Thus, although the declaration of rights declares that the inhabitants of Maryland are entitled to the common law of England, and the statutes in force there at the time of their emigration, yet the executive powers derived therefrom, although used in England or Great-Britain, unless in force, recognized, and adopted as part of the laws of Maryland in 1774, are hereby excluded from the general grant of executive powers to the governor; who is expressly prohibited from the exercise of any such, on any pretence whatever.

Under any other construction of the constitution than that here laid down, these two last cited provisions are absolutely absurd; but under the fabrication which the Friend to Candour has attempted to impose on the public as the constitution of Maryland, that the governor and council are intrusted with all other executive business not confided to the governor alone, and still more under the construction of this writer, and the pretensions and practice of the council, that their advice and consent place him under their imperative guidance in the exercise of those other executive powers—these clauses must have been introduced by the convention in derision, which cannot be gravely contended of the venerable founders of our liberty:—although really under the degraded and humiliating state to which the chief magistrate has been reduced by the abuses that are practised; not only these clauses, but the whole constitution, appears now like mockery and insult to this officer.—He must be a compound of qualities as inconsistent as the duties now required of him—at one moment he is called to discharge the most awful and important duties that society can intrust to an individual—which require all the virtues of the heart and all the energies of the mind; he holds in his hands the keys of life and death, and is the last resort for mercy in this world: If he does not command in person, he must still solely direct the united efforts of society in that appeal to arms which involves the fate of every thing dear and valuable to individual and associated man; and in the next minute he is deprived of all use of his intellectual faculties, and must submit as a mere automatal machine, to sign his name to any thing that perhaps two of his council may direct, against his judgment, contrary to his sense of duty, and the obligations of his oath. The enlightened patriots who formed the constitution of Maryland, were far from intending to place at the head of their government a golden calf to be worshipped; but as little were they disposed to throw down a log for frogs to play upon: their whole work evidences that they intended to improve on a well known establishment, that had grown out of the wisdom and experience of their ancestors, curtailing only such of its powers as had been abused, and rendering the depository himself responsible for the exercise of those retained—conformably to which construction, we find the governor, as the executive of Maryland, on the same principles which guided the legislative and judiciary, continuing to issue proclamations, a power derived from the common law of England, as recognized and practised here; executing the powers conferred on a proprietary governor under the statute law of 1766, and by other laws previous to the revolution, an instance of which we shall have occasion presently to notice.

With the foregoing synopsis and preliminary observations, the 34th section of the constitution will be found, on examination, to be not only clear, and consistent with every other part of the same instrument, but its true meaning and construction will produce a very different result from what has been expected by those who now rely on it to support their pretensions. The whole section stands thus—"That the members of the council, or any three or more of them, when convened, shall constitute a board for transacting of business: That the governor for the time being shall preside in the council, and be entitled to vote on all questions in which the council shall be divided in opinion; and in the absence of the governor the first named of the council shall preside, and as such shall also vote in all cases where the other members disagree in their opinion." The first clause of this section, declaring the number that shall constitute a board to do business, is the usual preliminary in organizing a deliberative body of public functionaries; it may only be observed that it was peculiarly necessary here, as the council to the governor had before consisted of an unfixed number. On the 16th April, 1747, governor Ogle took the advice of eleven counsellors: on the 16th September, 1747, he acted with only three. The next words that occur (*when convened*) are material: the expression, it is to be observed, is passive, not active; and we ask by whom convened? Will it be answered convened by themselves? If so the phraseology is uncommon, and the idea unique in legislation. Can it be possible that the convention intended to leave the constitutional assemblage and adjournment of this body for the transacting of such important business dependent entirely on the fortuitous concurrence of a majority at the same time and place? Could they rely on one simultaneous impulse on five men situated in different parts of the state? What a door would it open for fraud and intrigue, if three might convene themselves at any time, constitute a board for the transacting of business without the knowledge of the governor and the other two members? and how different might the result be if the governor and those members were attending? It might then happen, and it actually does now frequently happen, although it is not carried to all the extreme of which the abuse is susceptible, that two members residing at the seat of government, a third may ride into town—never apprize the governor—collect the other members—turn out what officers of the state they please, and put others in their places, and the first notice the governor may receive of business so transacted, may be commissions sent to him to sign for 30 or 40 officers, or perhaps double that number, whose names he probably never heard of before, and some of whom, to his knowledge, may be improper characters;—and if he does not sign these commissions, he is liable, as the Friend to Candour supposes, to a civil suit. Is it possible this can be the meaning of the convention? let their work speak for itself—it can bear no such construction; but when connected with the laws of 1774, all is clear and consistent—at that time the governor could alone convene the general assembly for legislative, or the council for executive business; the latter, it is believed, he almost invariably convened at his own house for that purpose: neither of these bodies had any right to convene themselves: if they had convened themselves, they were

neither an assembly nor a council; nor are they at this day invested with any public authority whatever, when convened in any other manner than that prescribed by the constitution and laws. By referring to the constitution, and our preceding remarks, we must perceive the great care observed in that instrument to prescribe the manner in which the general assembly may be constitutionally convened and adjourned, limiting the authority which the governor possessed on this subject under the laws of 1774. But in what part of the constitution has the convention destroyed or limited the power of the governor to convene and adjourn the council? It is a power he ever exercised; in full force on the 1st of June, 1774, and unless destroyed by the convention, or some subsequent law, it is in force at this day; it is now still more essential than formerly to the constitutional discharge of some of the most important duties of his office, which he cannot exercise without their advice and consent; to obtain which he must convene them. Here then we find the reasons which induced the legislature when they limited the power the governor always possessed, (which they had recognized under their general grant,) of convening and proroguing the assembly, to leave his power over the assemblage and adjournment of the council as it stood by the general laws: and the reason why no time is fixed for their assemblage, or power conferred on them to convene themselves, leaving it dependent on the occasions that might require their advice. This will be still more evident when we proceed in our comments on the next words of the section, (*for the transacting of business*), and shall satisfactorily ascertain what this business may be. It is neither legislative nor judicial; by the declaration of rights: they are not to transact the general business of the executive department, as the Friend to Candour has laboured to establish, by stating the reverse of the constitutional provision; for as we have frequently cited, the governor may alone exercise all other executive powers of government, unless the concurrence of the council is required by the laws.—To entitle the council to act at all, they must be specially authorized by the constitution, or some other law; and when they do act, they must act by advising and consenting to some act of the governor. They never had acted in any other manner on executive business before the constitution, and that in the sole manner in which the constitution directs them to act throughout—for although the constitution, sec. 49, mentions the civil officers of the appointment of the governor and council, they are merely words of reference, and as such correct and consistent, with all the other parts of the instrument and the construction here laid down; but those terms are never used as terms of grant throughout the constitution. When powers are invested in the executive, they are invested in the governor alone, or in the governor, by and with the advice of council. The governor is the agent always contemplated, and advice and consent presuppose an act to consent to, for although they with strict propriety may be said to advise what they consent to, yet the converse of the proposition is really absurd, for they cannot be said to consent to an act which emanates solely from their own advice.

A CIVIL OFFICER OF MARYLAND.

(To be continued.)

NEW-YORK, April 29.

On the important question of peace or war, between Great-Britain and France, we have nothing decisive. The definitive answer of Buonaparte to the ultimatum of the British cabinet, which was every moment expected, had not arrived in London on the 20th March. Our extracts are principally confined to the subject. In fact, the London papers are almost wholly occupied with the "din of warlike preparation," and with conjectures on what will be the probable issue.

It is mentioned as report in a paper of the 14th, that Buonaparte had written a letter to the king of England, of which the following is the substance:—"Brother, in disputes between nations of such importance as England and France, a question must necessarily arise of considerable moment, viz.—Which is the greater?" We of course, reciprocally, must be partial; and I have no hesitation in declaring, that if Britain do not submit to my claims, the English empire must be *erased* (destroyed)."

The probability of a renewal of hostilities, and the report of an embargo in the French ports, had caused a sensible depression of the funds at the date of our latest accounts.

LATEST FOREIGN INTELLIGENCE,

From London papers to the 20th March, received at the office of the Mercantile Advertiser, by the ship Juliana, and other arrivals.

LONDON, March 9.

A most important message from his majesty was yesterday delivered to the two houses of parliament, of which the following is an accurate copy:—

"His majesty thinks it necessary to acquaint the house of commons, that as very considerable military preparations are carrying on in the ports of France and Holland, he has judged it expedient to adopt additional measures of precaution for the security of his dominions. Though the preparations to which his majesty refers are avowedly directed to colonial service, yet as discussions of great importance are now subsisting between his majesty and the French government, the result of which must at present be uncertain. His majesty is induced to make this communication to his faithful commons in the full persuasion that, whilst they partake of his majesty's earnest and unwary solicitude for the continuance of peace, he may rely with perfect confidence on their public spirit and liberality, to enable his majesty to adopt such measures as circumstances may appear to require, for supporting the honour of his crown and the essential interests of his people."

"Ordered, That his majesty's said most gracious message be taken into consideration to-morrow."

March 10.

Notice was given last night by the minister that 10,000 additional seamen would be proposed to be voted to-morrow. The press-warrants have obtained a very large supply of prime seamen. The mansion house was crowded with sailors yesterday and this morning all eager to enter. In the course of Tues-

day upwards of 3000 men were procured. Press-warrants have also been sent to all our ports.

On Tuesday night large parties of seamen from the different ships at Spithead were ordered on shore for the purpose of impressing seamen for the fleet, and every man was indiscriminately taken from on board colliers and other ships.

The same activity prevailed yesterday, and a great number of hands were obtained. The same measures have been ordered to be adopted at Plymouth, Yarmouth, Falmouth, and the other ports. Several frigates and gun brigs have sailed for Guernsey and Jersey with warrants to impress seamen. Recruiting parties for the marines have been ordered out, and five guinea bounty is to be given to men entering. At the admiralty all is vigilance and activity. The board sits to a late hour every day, and the clerks are kept at work all night to forward the dispatches and orders to the different ports.

Orders were last night dispatched to Batham to get ready for sea, as quick as possible, every ship at that place, that can be equipped for service.

Orders have also been issued for the artificers in his majesty's dock-yards, to work as much extra time as they possibly can, in completing the repairs of the ships of war now in dock, and of those ordered into dock, when there may be some to receive them.

Naval officers have been flocking to the admiralty; above 300 captains have been there within these two days. Many of our great admirals have been sent for. Lords Nelson and Keith have both had conferences with earl St. Vincent.

Dispatches have been sent to Portsmouth to be forwarded to the Mediterranean. In the frigate which is to carry out these dispatches, captain Dodd, aide-de-camp to his royal highness the governor of Gibraltar, goes out again to that garrison. He carries with him dispatches to his royal highness the duke of Kent.

Military preparations are carrying on with the same vigour and dispatch. The militia are to be called out—orders have been issued to increase the army; and to facilitate this object, his royal highness the duke of York has intimated to the proper officers in his majesty's command, that the standard for the recruits that may be hereafter enlisted for the infantry of the line shall be reduced to five feet five inches; that the levy money for men of that height shall be raised to six guineas; of which the men are to receive five guineas in money and necessaries; and that the levy money for boys for general service shall be raised to four guineas, of which they are to have three guineas in money and necessaries.

March 11.

Yesterday general Andreossi, M. Schimmelpenninck, and the Spanish minister, waited on lord Hawkebury, at his office, and had a conference with his lordship upon the measures and preparations now making by this country. Soon after the conference each of the ambassadors dispatched a courier to his respective government.

Ten thousand additional seamen are to be voted to-day by parliament—and it is probable that some debate will take place in both houses upon the size of the country. Ten additional sail of the line are to be put in commission with all possible speed. In a fortnight, we have no doubt, that 60 sail of the line, completely equipped, will be riding in our ports.

In all probability fleets of observation will instantly be sent out. Lord Nelson, of course, will have the command of one of them. It is a very fortunate circumstance that various causes have delayed the sailing of the French squadrons in the ports of Havre, voetsluys and Dunkirk. The Louisiana expedition has been delayed, first by the failure of a house in Paris, which had the contract for supplying it with necessaries; and secondly, by the frost, which set in with great severity in Holland.—Our correspondent at the Hague has informed us that it is to sail the end of this month. But if these preparations in the French and Dutch ports have given cause of just alarm and suspicion to our ministers, they will not of course, we should suppose, permit these fleets to get to sea.

March 15.

During the press on the river, a great number of American seamen have been taken; in consequence, Mr. Erving the consul of the United States, resident in London, has had a long interview with the lords of admiralty, when all those seamen who gave satisfactory testimonials of their being citizens of America, were ordered to be discharged. Several, however, have entered voluntarily.

March 17.—A circumstance of a very extraordinary nature transpired yesterday, which, however, made no noise or impression on the city. On Tuesday night, at half past ten o'clock, a person arrived express at the admiralty from Brighton, with an account of a French vessel having drifted on shore near that place; she had, it seems, been deserted by the crew, excepting a boy, and having been boarded, was found to be laden with about 100,000 stand of arms.—Before the crew left her, they threw a bar on shore near Shoreham, and found to contain stacks of green colours, suited to the Irish.—These colours had the word *Union* on them, and we have heard it stated, with a French and Irish hand united underneath. This is the account which was in general circulation; some said the ship was found off Cork. The admiralty was yesterday engaged in examining green colours of the nature alluded to; but we doubt the reports of the quantity of arms. Those who have been able to investigate all the circumstances, can judge whether this ship be a stratagem or not.—No thing is more likely than that Buonaparte would send a vessel with arms, &c. apparently for the Irish.